DEVELOPMENT & COMMERCIAL BANK BHD.

v.

NUM TJUAN SDN. BHD.

SUPREME COURT, KUALA LUMPUR
LEE HUN HOE CJ (BORNEO)
MOHD. YUSOFF MOHAMED SCJ
AJAIB SINGH SCJ
[CIVIL APPEAL NO. 408 OF 1988]
9 JANUARY 1989

CIVIL PROCEDURE: *Execution - Whether attached properties in the premises belonged to defendant or claimant - Premises occupied by claimant at the time of attachment - At the time of judgment occupied by defendant - Claimant bought the chattels and materials from defendant - Ownership of properties claimed by claimant - Whether bona fide purchase.*

This appeal concerns the question of ownership of certain attached properties. The Senior Assistant Registrar dismissed the claimant's claim of the properties attached by the plaintiff. On appeal by the claimant, the High Court, allowed the appeal against the decision of the Senior Assistant Registrar with costs (see [1989] 1 CLJ (Rep) 498). Hence this appeal by the plaintiff to the Supreme Court.

Held:

[1] The Supreme Court agreed with the views of the learned Judge that the claimant had been able to establish that they were the lawful owners of the attached properties.

[2] As the learned Judge had given his reasons for disagreeing with the findings of the Senior Assistant Registrar, the Supreme Court supported the decision of the learned Judge in dismissing the appeal.

[Appeal dismissed with costs.]

Case referred to:

Sigma Air Conditioning Sdn. Bhd. v. World Wide Agencies (M) Sdn. Bhd. [1980] 1 MLJ 179

For the appellant - Lim Seong Chun; M/s. Lim Seong Chun & Co.
For the respondent - S.A. Lingam; M/s. S.A. Lingam & Co.

JUDGMENT

Lee Hun Hoe CJ (Borneo):

We dismissed the appeal and stated we would give our reasons later. We do so now.

This appeal concerns the question of ownership of certain attached properties.

The plaintiff (Development and Commercial Bank Bhd.) obtained a judgment in default of appearance against the defendant (Lam Chuan Company) on 14 January 1987 for RM429,202.76 with interest and costs. In execution of the judgment certain properties had been attached at No. 76, Jalan Sultan Iskandar, Ipoh on 27 January 1988 which at the time of attachment was occupied by the claimant (Num Tjuan Sdn. Bhd.) But, at the time of judgment it was occupied by the defendant.

There was an earlier attachment on 21 August 1987 but this was abandoned after negotiations. So that the present attachment is the second one.

The defendant had wound up on 16 April 1987 and did not operate on the premises since.

By a sale agreement dated 13 April 1987 the claimant bought from the defendant chattels (RM3,000) and cloth materials (RM47,000). The claimant was incorporated the following day, i.e. 14 April 1987 with RM50,000 issued and paid up capital and RM300,000 authorised issued capital. The claimant also purchased from 28 suppliers more cloth materials totalling RM459,735.49.

From 1 May 1987 the claimant became the tenant of the premises at RM1,900 per month as evidenced by the tenancy agreement. The claimant claimed to be the owner of the property attached. The matter came before the Senior Assistant Registrar (SAR) who dismissed the claim on 14 May 1988. The SAR heard not less than 15 witnesses. At least 12 suppliers testified that the claimant bought the goods from them. The SAR rejected these, taking the view that there was no *bona fide* purchase and relying on *Sigma Air Conditioning Sdn. Bhd. v. World Wide Agencies (M) Sdn. Bhd.* [1980] 1 MLJ 179. There the plaintiffs had obtained judgment against the defendant company and had proceeded to attach the movable property of the defendant company. The objector claimed to be the owner of the goods seized. The Senior Assistant Registrar dismissed the notice of objection. In dismissing the appeal the learned Judge held that the Senior Assistant Registrar was right and that the evidence showed that the goods were purchased by the objector for and on behalf of another company. It was for that company to object and not for the objector to do so. It was further held that even if the objector had purchased the goods for himself, he had failed to show that the purchase was *bona fide*. The sale agreement was colourable.

In the case under appeal the learned Judge disagreed with the SAR who took the view that there were two issues, namely:

(1) whether the claimant had purchased the goods as listed in the inventory from the judgment debtor at the time of the first intended attachment; and

(2) whether the purchase was done *bona fide*, if the answer to the first issue was positive.

The learned Judge considered that there was really only one issue, i.e., whether the goods belonged to the claimant or the defendant at the time of attachment. He noted that 12 witnesses testified that they had supplied the said goods to the claimant. There were 28 suppliers and they came from different parts of the country as well as from Singapore. There was no evidence to show that they conspired with the claimant to cheat the plaintiff. He distinguished *Sigma's* case (*supra*) 1 MLJ 179 by pointing out that the facts in our case were different.

Before us the plaintiff tried to show that the purchase of goods by claimant from the defendant was not genuine and that many suppliers were never paid. The claimant conceded that 8 suppliers had yet to be paid. The plaintiff alleged that particulars relating to the purchases were fabricated. There was no payment in fact. Those who formed the claimant company (except for Lee Wan the Managing Director of the claimant company) were related to the defendant. He contended that the disposal of the goods to the claimant was purely to defraud the execution creditor.

The learned Judge had gone into the matter very carefully. He realised that the SAR had heard many witnesses and had the advantage of observing and hearing the witnesses. Normally, an Appellate Court would not disturb the findings of the lower Court. It is of course the duty of an Appellate Court to be a Judge of fact as well as of law. At the same time it would be abrogating its function if it made a hard and fast rule never to interfere with the

findings of fact and felt bound to support a judgment which, on review of all the evidence, it considered to be clearly wrong. The learned Judge had given his reasons for disagreeing with the SAR.

We find that we agree with the view of the learned Judge that the claimant had been able to establish that they were the lawful owners of the attached properties. Accordingly, we support the learned Judge in dismissing the appeal.

Also found at [1989] 2 CLJ 98